

REMARKS/ARGUMENTS

In light of the following remarks, entry of this amendment and reconsideration and allowance of this application are respectfully requested.

Claims 18-26 and 42-47 are pending in this application.

Claims 18-26 and 42-47 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner contends the phrase "[a processor] internal to the device," which was previously added to the independent claims, is not supported in the original specification and drawings. However, Figure 1 clearly shows the processor 60 is internal to the portable communications device 10. Moreover, the specification states "the PCD, generally designated as 10, includes a recording module 20, communications module 30, input device 40, display 50, processor 60 and power circuit 80." (Specification para. [0010]) Accordingly, Applicants believe the phrase "internal to the device" is clearly supported by both the Specification and the drawings and therefore this rejection should be withdrawn.

Claims 18-26 and 42-47 were rejected under 35 U.S.C. 103(a) as being unpatentable over Swierczek (U.S. Patent No. 6,941,275).

The Examiner has maintained his rejection without considering the "processor internal to the device" limitation previously amended into the claims. The Examiner contends Applicant's previous arguments "are moot in light that no processor internal to the portable device has been disclosed by Applicant's original disclosure." (Office Action page 3)

However, as discussed above, an internal processor 60 is clearly shown in Figure 1 and disclosed in paragraph [0010] of the Specification. Accordingly, Applicant respectfully asserts the previously presented arguments are valid and should be considered by the Examiner.

The present claims are directed to a portable communications device (PCD) having "a processor internal to the device and operative to compare the sampled portion signal against said comparison information to identify the full audio work." (Claim 18) For example, the claimed embodiment may be a portable device which receives a portion of an audio work and compares it internally with a stored database of comparison information for identifying the full audio work. By way of example and without limiting the claims, support for the claim may be found at paragraph 21, on page 18, of the Specification.

The Examiner contends Swierczek anticipates the present claims. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). The Examiner relies upon Swierczek as disclosing a processing unit to analyze the music at column 3, lines 16-36. (Office Action page 2) However, Swierczek discloses:

the listener can go to a computer or music identification kiosk 10 having a computer interface 12 and replay or transmit the music 52 into a microphone 14 of the interface. In one embodiment, the interface 12 is connected to an automated database 16 over the Internet. The automated database 16 uses a central processing unit and search [sic] stored information as known in the art to analyze the music segment and compare it to stored works until a match, matches, or near matches are found and the music segment is identified 54.

(Column 3, lines 16-25). Hence, Swierczek discloses that the device transmits the recorded music segment to an external processing unit which performs the comparison. Swierczek's approach is more appropriately compared to a different (non-claimed) embodiment of the present invention in which the present portable device uploads the sampled portion to an audio recognition service for identification. (See paragraph 19, on page 17, of the Specification) By contrast, the present claimed embodiment requires the comparison to be performed by a processor internal to the portable device itself. Swierczek does not disclose performing the comparison/identification within the portable device as required in the present claims. Thus, Swierczek fails to meet the "processor internal to the device" limitation of the present claims. Accordingly, for at least this reason, Swierczek fails to anticipate the present invention and the rejected claims should be allowed.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

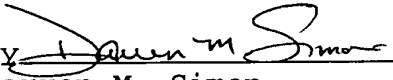
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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095.

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Respectfully submitted,

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